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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 440/2018

OM PRAKASH

..... Appellant

Through Mr. Ramesh Gupta, Sr. Advocate
with Mr. Hrishikesh Baruah, Mr.
Siddhant Kaushik, Mr. Ashok Kumar
and Mr. Ajay P. Tushir, Advs.

versus

THE CENTRAL BUREAU OF INVESTIGATION Respondent

Through Mr. Ripu Daman Bhardwaj, SPP with
IO Inspector Rohtash

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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25.04.2018

Crl. M.A. No. 7150/2018 (exemption)

Allowed, subject to all just exceptions. Application is disposed of.

CRL.A. 440/2018

Admit.

List in due course. Trial court record be requisitioned.

Crl. M.B. No. 629/2018 (suspension of sentence)

Appellant has been convicted under Section 120-B IPC read with
Sections 419/420/468/471 IPC and under Section 13(2) read with Section



13(1)(d) of the Prevention of Corruption Act, 1988 & Section 12(1)(b) of the Passports Act, 1967 by the Trial Court. Maximum sentence handed down to the appellant is four years rigorous imprisonment with fine of ₹1 lac and in case of default of payment of fine to undergo simple imprisonment for a period of three months. Fine is stated to have been deposited.

Appeal has already been admitted. Disposal of the appeal is likely to take time. Chances of appeal being heard in near future are remote.

In Bhagwan Rama Shinde Gosai and Ors. vs. State of Gujarat, 1999

(4) Supreme Court Cases 421, Supreme Court has held thus:-

“When a convicted person is sentenced to fixed period of sentence and when he files appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when motion for expeditious hearing the appeal is made in such cases. Otherwise



the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter suspending the sentence, so as to make the appeal right meaningful and effective. Of course appellate courts can impose similar conditions when bail is granted.”

In *Kiran Kumar vs. State of M.P.*, 2001 (9) Supreme Court Cases 211, sentence of the appellant was suspended keeping in view of the decision in *Bhagwan Rama Shinde Gosai (supra)*. In *Kashmira Singh vs. State of Punjab*, AIR 1977 Supreme Court 2147 and *Babu Singh and Ors. vs. State of UP*, AIR 1978 Supreme Court 527 also sentences were suspended where the fixed term of sentences was involved. A learned Single Judge of this Court, vide order dated 30th August, 2015 passed in Crl. M.B. No. 7515/2015 in Crl. Appeal no. 205/2015 titled *Ajit R. Kayal vs. CBI*, has observed that when a Court is not in a position to hear the appeal of an accused within a reasonable period of time, it would ordinarily unless there are cogent grounds for acting otherwise, release the accused on bail during the pendency of appeal against his conviction and sentence.

Learned SPP submits that this is the second conviction of the



appellant.

Learned Senior Counsel submits that in the other case, only sentence of one year has been awarded to him. It is further submitted that petitioner was a Public Relation Officer in Regional Passport Office. It is, at best, the case of his negligence in issuing the passport. Appellant is aged about 67 years. He is suffering from various ailments like heart disease, severe diabetes, swelling in legs, high blood pressure etc.

I need not to go into the merits and demerits of the case at this stage.

Keeping in mind the totality of the facts and circumstances of this case, sentence of the appellant is suspended during the pendency of appeal, subject to his furnishing a personal bond in the sum of ₹50,000/- with one surety in the like amount to the satisfaction of the trial court.

Application is disposed of in the above terms.

Dasti.

A.K. PATHAK, J.

APRIL 25, 2018
r.bararia